

April 29, 2004
DECISION AND ORDER
OF THE DEPARTMENT OF ENERGY

Application for Exception

Name of Petitioner: Southern Company

Date of Filing: August 6, 2002

Case Number: VEE-0096

On August 13, 2002, the Southern Company Services, Inc.,^{1/} (Southern) of Birmingham, Alabama, filed with the Office of Hearings and Appeals (OHA) of the U.S. Department of Energy (DOE) an Application for Exception and an Application for Stay under the provisions of 10 C.F.R. § 1003.20. The Southern Application concerns various operating data pertaining to the firm's sale of electricity that the DOE Energy Information Administration (EIA) collects through Form EIA-411, "Coordinated Bulk Power Supply Program Report." EIA publishes this data, by state, in firm-specific form. In its exception request, Southern seeks authorization to have its revenue and sales data withheld from public release on grounds of confidentiality as well as serious hardship and burden. The exception application incorporates an Application for Stay of release of the information contained in Form EIA-411, pending resolution of the exception request.^{2/} The Application for Stay was denied October 2, 2002.

I. Background

The EIA reporting requirements arise from domestic dislocations of crude oil and petroleum products that occurred during the 1970s. Specifically, in 1979 Congress found

^{1/} According to the submission, the application "is submitted by Southern Company Services, Inc., as agent for Alabama Power Company, Georgia Power Company, Mississippi Power Company, Gulf Power Company, and Savannah Electric & Power Company."

^{2/} The provisions of Section 1003.9 require that "[e]ach application, petition or request for OHA action shall be submitted as a separate document, even if the applications, petitions, or requests deal with the same or a related issue, act or transaction, or are submitted in connection with the same proceeding." 10 C.F.R. § 1003.9. We have waived that requirement in this case.

that the lack of reliable information concerning the supply, demand and prices of petroleum products impeded the nation's ability to respond to an oil crisis. Congress therefore authorized the DOE to collect data on petroleum product supply and price. Form EIA-861 collects annual information, regarding the retail sales and associated revenue from the retail sales of electricity of individual firms identified as energy service providers. As energy providers, the Applicants are required to submit Form EIA-861. Normally, due to the public interest in the material filed with EIA, with few exceptions, the material is required to be released to the public. In the case of the Form EIA-861, release of the material in aggregate form by EIA occurs approximately one year following the period for which the data is furnished.

An Application for Exception may be granted where the reporting requirement causes a "special hardship, inequity, or unfair distribution of burdens." 42 U.S.C. § 7194(a); 10 C.F.R. § 1003.25(b)(2). Because all reporting firms are burdened to some extent by the reporting requirements, exception relief is appropriate only where a firm can demonstrate that it is adversely affected by the reporting requirement in a way that differs significantly from the impact of the requirement on other reporting firms.

II. Analysis

In its Application for Exception, Southern claims that the material it provides on Form EIA-411 is confidential under the Trade Secrets Act, and exempt from disclosure under Exemption 2, 4, and 7(f) of the Freedom of Information Act. Southern also argues that because of its size and scope of operations, the burden of filing the report falls more heavily on Southern than others. If this is so, *i.e.*, that Southern has more filing obligations than others, it is because of Southern's vast operations. *See supra* note 1. By the same token, however, the firm's resources are also vast and so it is not apparent that the relative burden upon Southern of filing Form EIA-411 is inequitable or disproportionate. More importantly, Southern is one of the largest groups of power utilities in the domestic economy and the data the firm provides is critical to the EIA's mission to provide policy-independent data, forecasts, and analyses that promote sound policy making, efficient markets, and public understanding regarding energy and its interaction with the economy and the environment. After reviewing Southern's arguments, we find they are insufficient to support the claim that Southern will experience an injury or inequitable distribution of burdens.^{3/}

^{3/} A claim of this type should include specific material and detailed, fact-based explanations as to how, specifically, in the case of Southern, its doing business in its particular competitive market area and with its customers and competitors will be harmed by release of this data. Such a showing should include consideration of the fact that when the data is to be released, it will be in aggregate form and, on average, more than one year old.

We requested additional, supporting information from Southern. The firm, however, responded that it believed the supporting information submitted with the Application was sufficient to demonstrate its right to confidential treatment. In the absence of the type of factual material that would establish hardship or inequity, there is nothing that would lead us to conclude the requested exception is warranted.

III. Conclusion

In accordance with the above discussion, we find that an Exception is not warranted in this case, because the arguments provided are insufficient to support the claim that the Applicant will experience any injury or competitive disadvantage. Consequently, the Department of Energy has determined that the Application for Exception filed by Southern Company should be denied.

It Is Therefore Ordered That:

1. The Application for Exception filed by Southern Company, Case No. VEE-0096, is hereby denied.
2. Administrative review of this Decision and Order may be sought by any person who is aggrieved or adversely affected by the denial of exception relief. Such review shall be commenced by the filing of a petition for review with the Federal Energy Regulatory Commission within 30 calendar days of the date of this Decision and Order pursuant to 18 C.F.R. Part 385, Subpart J.

George B. Breznay
Director
Office of Hearings and Appeals

Date: April 29, 2004